



# Biz-Law Briefing

A Practical Journal for Closely-Held  
& Family Businesses

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## Special points of interest:

New Jersey property tax appeals coming in record numbers.

If the assessment of your property exceeds its true value, you may be eligible for a rebate.

Employee or Independent Contractor?  
Know the difference—and the tax consequences.

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## Real Estate Tax Appeals—

### A Strategy for Cost Reduction

By Jason R. Rittie, Esq.

A recent article in the New York Times reported that the requests for property tax appeals “...are coming in record numbers, from owners of \$10 million estates and one-bedroom bungalows, from residents of the high-tax enclaves surrounding New York City, and from taxpayers in the Rust Belt and states like Arizona, Flor-

ida and California, where whole towns have been devastated by the housing bust.”\* In these tough economic times, many home and business property owners are considering filing a tax appeal to help reduce and control expenses and costs. Generally, property values in New Jersey have dropped and now residential and business properties have become “overvalued.” Consequently, you may be entitled to a reduced property assessment resulting in decreased taxes.

### Property Tax Appeals, Where Do I Start?

To find out if you may be eligible for a property tax rebate, first look closely at your real estate tax assessment statement. Does the assessment figure on your current Notice of Assessment reflect the true value of your building and land? If not, you may be eligible for a rebate. Real Estate Tax Appeals must be filed annually on or before April 1 or within 45 days of the bulk mailing of the Assessment Notices. However, if a municipality recently underwent a municipal-wide revaluation or municipal-wide reassessment, an appeal must be filed on or before May 1. In any case, don't wait. Start doing your research and consult with an attorney today to understand your rights and responsibilities under the law.

In addition to the market value of the property, there are other factors that may entitle you to a reduction in your property taxes. Examples:

- ✓ Machinery and equipment. Under New Jersey laws and regulations, certain items of machinery, apparatus and equipment used in business or industry are excluded from real property assessments. Thus, the real estate must be valued as if these items didn't exist.
- ✓ Transfer of title. A municipal tax assessor cannot increase a property's assessment merely because it has recently sold for a higher purchase price.
- ✓ Legally imposed restrictions. Rent control, Mount Laurel, and Highlands restrictions may justify reductions in assessed valuations.

### Are There Special Rules for Commercial Properties?

Yes. If you own rental income property, for example, you must supply an income statement when filing an appeal on special forms provided by the Assessor. The net income generated by a property is used to measure the return on the investment and, accordingly, affects the property value. Of course, this information may be used in arguing both sides of an appeal. An appeal by a business entity, (e.g. partnership, corporation, LLC), must be prosecuted by an attorney admitted to practice law in New Jersey.

To prepare for a tax appeal hearing, there's a great deal any property owner should know, and seeking competent legal advice is crucial to success.

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## NEWS OF OUR FIRM

Bonnie Frost, a partner, appeared once again on the legal program, *The American Law Journal TV*. Bonnie participated on a panel entitled, “Divorce: Breaking Up is Hard to Do... in This Economy” which aired Monday, September 21 at 7:00 pm.

Ms. Frost, along with the program’s host and her colleagues, discussed how and why the current economic climate has impacted divorce proceedings and settlements. Visitors to the Einhorn Harris website can watch segments of previous *Law Journal TV* shows on Ms. Frost’s media page: <http://einhornharris.com/Media>



### A Message From the Founding Partner of the Firm Theodore E. B. Einhorn

This quarter, in *The Wall Street Journal* online, readers vote on what the economic recovery will look like—sharp, slow, or short lived. At the time of this printing, “short-lived” is leading with 64% of the vote. Admittedly, the mood of the public cannot be described as positive for the long-term. Yet most are hopeful for at least a brief respite. Hope prevails as we all read about incentive programs like “cash for clunkers.” Financial gurus watch Wal-Mart expansion plans and read the news of Wall Street market upturns, and they wait for the signs of recovery. At Einhorn Harris, through interaction with our clients and involvement with various aspects of the community, we have a “feel” for what is happening on the local level of the economy—some upward movement but still a large degree of fear of the unknown—the future. We believe that providing quality professional legal services at affordable and flexible rates is what our clients need now and in the future, so we focus on reducing internal costs and streamlining procedures, simplifying where we can, while maintaining the highest levels of personal service for our clients. We would appreciate your feedback on this Newsletter and our website content and I encourage all of you to send your comments to our staff via email. I look forward to meeting many of you at our “Business Leaders Reception” at our offices here in Denville. We promise it will be an interesting evening, so I hope you will call and reserve a chair.



## Real Estate Tax Appeals

(Continued from page 1)

There are certain points to keep in mind when filing an appeal according to the *NJ State Guide to Tax Appeal Hearings*:

1. While you may appeal an assessment, you may not appeal the local taxes. Nonetheless, a reduced assessment will result in a reduced tax bill.
2. In order to bring an appeal, taxes and all other municipal charges must be current up to the first quarter of the year and a petition must be filed with your County Tax Board or the New Jersey Tax Court no later than April 1.
3. To succeed in reducing your taxes, you must prove that your property's assessed value is in error, unreasonable, excessive, or discriminatory compared to a market value standard. By law, your current assessment is assumed to be correct and you must overcome this presumption of correctness to obtain an assessment change.
4. An assessment is an opinion of value by a licensed

professional. For an assessed value to be considered excessive or discriminatory, you must prove that it does not fairly represent one of two standards: "True Market Value" or "Current Level Range." Our Real Estate attorneys can assist you in evaluating whether to file a tax appeal, and guide you and represent you through the appeal process.

\*"Tax Bill Appeals Take Rising Toll on Governments," by Jack Healy, NY Times, July 4, 2009.

As business owners seek ways to reduce costs, many

have turned to hiring independent contractors instead of employees. They should be aware, however, that the classification of a worker as either an employee or independent contractor for tax purposes is not an exact formula. A worker's status must be determined accurately to ensure that workers and businesses can anticipate and meet their tax responsibilities. For example, if a worker is an employee, then the employer generally must withhold and pay Social Security and Medicare taxes, withhold income taxes, and pay unemployment tax on wages paid to an employee. On the other hand, a business owner generally does not have to pay any taxes on wages paid to an independent contractor.

To determine whether a worker is an independent contractor or an employee, it

## Employee or Independent Contractor?

By Paulyn Holandez, Esq.

is important to consider all the facts and circumstances regarding the degree of control exercised by the business owner and the independence maintained by the worker. The Internal Revenue Service (IRS) has grouped the factors used to determine a worker's employment status into three categories: (i) behavioral control, (ii) financial control and (iii) relationship of the parties. Relevant questions include:

1. Does the business control the worker's schedule, what tools and equipment to use, what work is to be performed, and/or where the work is performed?
2. Does the business control how the worker is paid, whether expenses are reimbursed and/or who provides supplies?
3. Are there any written contracts or employee-type bene-

fits, e.g., pension plans, insurance, or vacation pay?

The key is to examine the entire relationship and consider the extent to which the business owner has the right to direct and control the worker. Additionally, the business owner should document each of the factors used in his or her final determination. If a business owner is unsure as to a worker's status for purposes of federal employment taxes and income tax withholding, then he or she may seek the advice of the IRS by filing the appropriate forms. Once the business determines the status of a worker, then the appropriate forms and any associated taxes should be filed with the IRS. If the foregoing is not accomplished, and a worker is misclassified, significant tax liabilities may be assessed. If you are unsure of a worker's status, then it is important to obtain the assistance of competent legal counsel.

### Attorney PROFILE



*Jason R. Rittie, Esq.* Jason practices in the area of business and real estate law, including tax appeals, contracts, asset sales and acquisitions, stock sales and acquisitions, and business formations.

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### Attorney PROFILE



*Paulyn Holandez, Esq.* Paulyn joined the firm as an Associate in 2008 in the Trusts & Estates/Taxation Group. In 2007, she completed an externship with the Internal Revenue Service District Counsel's Office, where she conducted tax research in preparation of cases for litigation before the United States Tax Court.

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# You Are Invited...

We are hosting a  
 “Business Leaders Reception”  
 Thursday, November 19  
 6:30 pm  
 at our offices  
 165 East Main Street in Denville.  
*hors d’oeuvres will be served.*



You will have an opportunity to meet our attorneys and discuss the topics in this and previous Biz-Law Briefings and any other legal issues you face in the day-to-day operation of your business or in planning for the future.

We look forward to meeting you.

*R.S.V.P by November 9th, please.*  
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*Newsletter*

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